

OLC 74-2021
13 September 1974

MEMORANDUM FOR THE RECORD

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SUBJECT: Memorandum from [REDACTED] dated 30 August 1974

1. To be sure that Senators John L. McClellan (D., Ark.) and Roman L. Hruska (R., Neb.) understood our position concerning court review of Agency information, I talked to Paul Summitt, General Counsel on Senator McClellan's Judiciary Subcommittee on Criminal Laws and Procedures, and Doug Marvin, Senator Hruska's staff man on Judiciary Committee matters. I left with them a copy of our position paper (attached).

2. Both understood our position and made clear that their principals also understood.

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[REDACTED]
Assistant Legislative Counsel

Attachment

Distribution:

Orig^v- Subject
1 - OLC Chrono
1 - PLC Chrono

OLC:PLC:cg (17 Sep 74)

Court Review of CIA (Foreign Intelligence) Information

Certain foreign intelligence information is inherently sensitive in view of the need to protect the sources and methods involved in its collection and analysis. In certain cases even the identity of the individual classifying the document must be protected for past or future operational reasons.

If the courts are to be granted a role by statute in determining the propriety of classification in freedom of information cases, the express standard of review should be one which would at least provide a presumption in favor of the classification of information for intelligence sources and methods reasons. It would appear that an appropriate affidavit from the Agency, the Director of Central Intelligence, should be sufficient to sustain the presumption that the classification is proper. Only if the presumption is rebutted by evidence should the court engage (in camera) in a review of the information to determine if the classification is arbitrary, capricious or without a reasonable basis.

The proposed criminal sanctions to deter CIA employees, and others having privileged access to sensitive intelligence sources and methods information, from disclosing such information without authorization, provides for full exposure of such information to the court in camera. The court in its review, must determine the reasonableness of the designation of such information for limited dissemination because of its relationship to sensitive intelligence sources and methods which must be protected for the public good and the court shall not invalidate the designation unless it determines that the designation was arbitrary and capricious.

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Reviewed by [REDACTED]
10 Sept. '74

Syle/Pat
Syl. & he
sure me
bellan &
Hruska's
people are
up to speed
for Daxie
meeting. Should
we talk to
Robertson or not
gib